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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,567	02/28/2002	Donald E. Weder	8403.522	5406

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EXAMINER

GELLNER, JEFFREY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 09/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/090,567	WEDER, DONALD E.
	Examiner Jeffrey L. Gellner	Art Unit 3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 July 2002.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,4-10,12-24,31-33,35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,4-10,12-24,31-33,35 and 36 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

PETER M. POCN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

fmP

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____ .
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 13, line 3, the phrase “floral disposed” is unclear.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-10, 31, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Olney et al. (US 4,098,177).

As to Claim 1, Olney et al. disclose a preformed sleeve for covering a pot (Figs. 2 and 3) having an upper end, lower end, and outer peripheral surface comprising a base portion having an upper end (region around leadline of 112 in Fig. 3) and closed lower end (region around leadline 26a of Fig. 3; 108 of Fig. 2), the base portion initially having a flat condition prior to being opened (defined as flattening cover on its side, not shown) having a tapered shape when in

the flat condition; a skirt portion (region above leadline of 112 in Fig. 3) extending from the upper end of the base; and a plurality of unconnected, vertically oriented, accordion-like, expandable folds (114 of Figs. 2 and 3) in the base wherein when a pot is in the sleeve the folds expand so that the base substantially covers and surrounds the outer peripheral surface of the pot.

As to Claims 3-5, Olney et al. further disclose the cover a thickness of about 0.1 mil to about 30 mils (col. 2 lines 14-20).

As to Claim 6, Olney et al. further disclose the material paper (col. 2 line 16).

As to Claim 7, Olney et al. further disclose accordion-type folds (Fig. 3).

As to Claim 8, Olney et al. further disclose a portion serving as a handle (any part of region around leadline 114 in Fig. 3).

As to Claim 9, Olney et al. further disclose a drainage hole (110 of Fig. 2).

As to Claim 10, Olney et al. further disclose the folds continuous between the base portion and the skirt portion.

As to Claim 31, Olney et al. disclose a preformed sleeve for covering a pot (Figs. 2 and 3) having an upper end, lower end, and outer peripheral surface comprising a base portion having an upper end (region around leadline of 112 in Fig. 3) and closed lower end (region around leadline 26a of Fig. 3; 108 of Fig. 2), an interior space when open (see Fig. 2), the base portion initially having a flat condition prior to being opened (defined as flattening cover on its side, not shown) having a tapered shape when in the flat condition; and, a plurality of unconnected, vertically oriented, accordion-like, expandable folds (114 of Figs. 2 and 3) in the base.

As to Claim 33, Olney et al. further disclose accordion-type folds (Fig. 3).

Claims 1, 3-7, 10, 21, 23, 24, 31, 33, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Weder et al. (US 5,314,398).

As to Claim 1, Weder et al. disclose a preformed sleeve for covering a pot (Figs. 1-3) having an upper end, lower end, and outer peripheral surface comprising a base portion having an upper end (16 of Fig. 1) and closed lower end (18 of Fig. 1), the base portion initially having a flat condition prior to being opened (defined as flattening cover on its side, not shown) having a tapered shape when in the flat condition; a skirt portion (14 of Fig. 1) extending from the upper end of the base; and a plurality of unconnected, vertically oriented, accordion-like, expandable folds (30a-30q of Fig. 2; col. 3 lines 30-35) in the base wherein when a pot is in the sleeve the folds expand so that the base substantially covers and surrounds the outer peripheral surface of the pot. (Note: Examiner considers the priority of the present application to extend no farther than to US 6,151,830 (filed 22 April 1998) because in its immediate priority document, US 5,749,171, neither the specification or drawings disclose a sleeve with vertical oriented folds.)

As to Claims 3-5, Weder et al. further disclose the sleeve having a thickness of from 0.1 to 30 mils (col. 2 lines 38-44).

As to Claims 6, Weder et al. further disclose made from a polymeric film (col. 2 lines 34-37).

As to Claim 7, Weder et al. further disclose z-shaped pleats (col. 3 lines 30-35; defining these pleats as z-shaped).

As to Claim 10, Weder et al. further disclose the folds being continuous from the base to the skirt (see Fig. 1).

As to Claim 21, Weder et al. disclose a preformed sleeve for covering a pot (Figs. 1-3) having an upper end, lower end, and outer peripheral surface comprising a base portion having an upper end (16 of Fig. 1) and closed lower end (18 of Fig. 1), the base portion initially having a flat condition prior to being opened (defined as flattening cover on its side, not shown) having a tapered shape when in the flat condition; a skirt portion (14 of Fig. 1) extending from the upper end of the base; and a plurality of unconnected, vertically oriented, accordion-like, expandable folds (30a-30q of Fig. 2; col. 3 lines 30-35) in the base wherein when a pot is in the sleeve the folds expand so that the base substantially covers and surrounds the outer peripheral surface of the pot. The sleeve of Weder et al. would inherently perform the method steps recited in Claim 21. (Note: Examiner considers the priority of the present application to extend no farther than to US 6,151,830 (filed 22 April 1998) because in its immediate priority document, US 5,749,171, neither the specification or drawings disclose a sleeve with vertical oriented folds.)

As to Claim 23, Weder et al. further disclose the folds being continuous from the base to the skirt (see Fig. 1).

As to Claim 24, Weder et al. further disclose the upper portion sized to substantially surround and enclose a floral grouping disposed in the pot.

As to Claim 31, Weder et al. disclose a preformed sleeve for covering a pot (Figs. 1-3) having an upper end, lower end, and outer peripheral surface comprising a base portion having an upper end (16 of Fig. 1) and closed lower end (18 of Fig. 1), an interior space when open (see Fig. 2), the base portion initially having a flat condition prior to being opened (defined as

flattening cover on its side, not shown) having a tapered shape when in the flat condition; and, a plurality of unconnected, vertically oriented, accordion-like, expandable folds (30a-30q of Fig. 2; col. 3 lines 30-35) in the base. (**Note:** Examiner considers the priority of the present application to extend no farther than to US 6,151,830 (filed 22 April 1998) because in its immediate priority document, US 5,749,171, neither the specification or drawings disclose a sleeve with vertical oriented folds.)

As to Claim 33, Weder et al. further disclose z-shaped pleats (col. 3 lines 30-35; defining these pleats as z-shaped).

As to Claim 35, Weder et al. disclose a preformed sleeve for covering a pot (Figs. 1-3) having an upper end, lower end, and outer peripheral surface comprising a base portion having an upper end (16 of Fig. 1) and closed lower end (18 of Fig. 1), an interior space when open (see Fig. 2), the base portion initially having a flat condition prior to being opened (defined as flattening cover on its side, not shown) having a tapered shape when in the flat condition; and, a plurality of unconnected, vertically oriented, accordion-like, expandable folds (30a-30q of Fig. 2; col. 3 lines 30-35) in the base. The sleeve of Weder et al. inherently discloses the method steps of Claim 35 when used. (**Note:** Examiner considers the priority of the present application to extend no farther than to US 6,151,830 (filed 22 April 1998) because in its immediate priority document, US 5,749,171, neither the specification or drawings disclose a sleeve with vertical oriented folds.)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 8, 12-17, 19, 20, 22, 32, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weder et al. (US 5,314,398) in view of Landau (US 5,235,782).

As to Claim 2, the limitations of Claim 1 are disclosed as described above. Not disclosed is an upper portion extending from the skirt and detachable therefrom via a detaching element. Landau, however, discloses an upper portion (28 of Fig. 1) extending from the skirt and detachable therefrom via a detaching element (26 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder et al. by adding a detachable upper portion as disclosed by Landau so that the sleeve can be secured on a hanger before use (see Landau at col. 3 lines 28-32).

As to Claim 8, the limitations of Claim 1 are disclosed as described above. Not disclosed is a portion for a support device. Landau, however, discloses a portion (28 of Fig. 1) for a support device. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder et al. by adding a portion for a support device as disclosed by Landau so that the sleeve can be secured on a hanger before use (see Landau at col. 3 lines 28-32).

As to Claim 22, the limitations of Claim 1 are disclosed as described above. Not disclosed is a portion for a support device. Landau, however, discloses a portion (28 of Fig. 1)

for a support device. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Weder et al. by adding a portion for a support device as disclosed by Landau so that the sleeve can be secured on a hanger before use (see Landau at col. 3 lines 28-32).

As to Claim 32, the limitations of Claim 31 are disclosed as described above. Not disclosed is an upper portion extending from the skirt and detachable therefrom via a detaching element. Landau, however, discloses an upper portion (28 of Fig. 1) extending from the skirt and detachable therefrom via a detaching element (26 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder et al. by adding a detachable upper portion as disclosed by Landau so that the sleeve can be secured on a hanger before use (see Landau at col. 3 lines 28-32).

As to Claim 36, the limitations of Claim 35 are disclosed as described above. Not disclosed is an upper portion extending from the skirt and detachable therefrom via a detaching element. Landau, however, discloses an upper portion (28 of Fig. 1) extending from the skirt and detachable therefrom via a detaching element (26 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Weder et al. by adding a detachable upper portion as disclosed by Landau so that the sleeve can be secured on a hanger before use (see Landau at col. 3 lines 28-32).

As to Claim 12, Weder et al. disclose a preformed sleeve for covering a pot (Figs. 1-3) having an upper end, lower end, and outer peripheral surface comprising a lower portion (region around leadline of 12 of Fig. 1) having a upper end (region around leadline of 10 in Fig. 1), a

lower end (region around leadline of 22 in Fig. 1) having a bottom (18 of Fig. 1), an interior space when open (see Fig. 2), the lower portion initially having a flat condition prior to being opened (defined as flattening cover on its side, not shown) having a tapered shape when in the flat condition; a upper portion (14 of Fig. 1) extending from the lower portion; and a plurality of substantially unconnected, vertically oriented, expandable folds (30a-30q of Fig. 2; col. 3 lines 30-35) in the lower portion wherein when a pot is disposed within the interior space of the lower portion the expandable folds expand so that the base substantially covers and surrounds the outer peripheral surface of the pot. Not disclosed is the upper portion detachable from the lower portion by a detaching element. Landau, however, discloses an upper portion (28 of Fig. 1) extending from the lower portion and detachable therefrom via a detaching element (26 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder et al. by making the upper portion detachable as disclosed by Landau so that the sleeve can be secured on a hanger before use (see Landau at col. 3 lines 28-32) and not have holes in the sleeve when used. (Note: Examiner considers the priority of the present application to extend no farther than to US 6,151,830 (filed 22 April 1998) because in its immediate priority document, US 5,749,171, neither the specification or drawings disclose a sleeve with vertical oriented folds.)

As to Claim 13, Weder et al. as modified by Landau further disclose the upper portion sized to substantially surround and enclose a floral grouping disposed in the pot (see Landau Fig. 2 if it were attached).

As to Claim 14, Weder et al. as modified by Landau further disclose the sleeve having a thickness of from 0.1 to 30 mils (col. 2 lines 38-44 of Weder et al.).

As to Claims 15, Weder et al. as modified by Landau further disclose made from a polymeric film (col. 2 lines 34-37 of Weder et al.).

As to Claim 16, Weder et al. as modified by Landau further disclose z-shaped pleats (col. 3 lines 30-35; defining these pleats as z-shaped of Weder et al.).

As to Claim 17, Weder et al. as modified by Landau further disclose a handle (18 of Fig. 1).

As to Claim 19, Weder et al. as modified by Landau further disclose the folds being continuous from the base to the skirt (see Fig. 1 of Weder et al.).

As to Claim 20, Weder et al. as modified by Landau further disclose a closed lower portion (see Weder et al. Fig. 2).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weder et al. (US 5,314,398) in view of Clement (US 2,827,217).

As to Claim 9, the limitations of Claim 1 are disclosed as described above. Not disclosed is the sleeve with a drainage hole. Clement, however, discloses a pot cover with a drainage hole in a base portion (26 of Fig. 16). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder et al. by adding drainage holes as disclosed by Clement so as to allow flow of water to prevent root rot in the soil.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weder et al. (US 5,314,398) in view of Landau (US 5,235,782) in further view of Clement (US 2,827,217).

As to Claim 18, the limitations of Claim 1 are disclosed as described above. Not disclosed is the sleeve with a drainage hole. Clement, however, discloses a pot cover with a drainage hole in a base portion (26 of Fig. 16). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the sleeve of Weder et al. as modified by Landau by adding drainage holes as disclosed by Clement so as to allow flow of water to prevent root rot in the soil.

Response to Arguments

Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stratton, Stonehocker, Capy et al., van den Hoogen, Rosenthal, Weder et al. ('312), Weder et al. ('521), Weder ('979), JP6-329188, JP10-229908, JP8-116796, WO 98/16291, and FR 2665114 A1 disclose in the prior art various sleeves with vertical folds.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the

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Technology Center where this application or proceeding is assigned are 703.305.7687,
703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding
should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



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